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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

GLENN EDWARD FANE,)	3:05-CV-0597-ECR-RAM
)	
Plaintiff,)	MINUTES OF THE COURT
)	
vs.)	DATE: NOVEMBER 27, 2006
)	
THEODORE D'AMICO,)	
)	
Defendant.)	

PRESENT: EDWARD C. REED, JR. U. S. DISTRICT JUDGE

Deputy Clerk: COLLEEN LARSEN Reporter: NONE APPEARING

Counsel for Plaintiff(s) NONE APPEARING

Counsel for Defendant(s) NONE APPEARING

MINUTE ORDER IN CHAMBERS

On October 16, 2006, the Magistrate Judge filed a Report and Recommendation (#22) recommending that Defendant's Motion (#10) to dismiss and for summary judgment be denied except with respect to the claim against Defendant in his official capacity.

The Objection (#24) to the Report and Recommendation (#22), filed by Defendant, is OVERRULED.

The Magistrate Judge's Report and Recommendation (#22) is well taken. **IT IS, THEREFORE, HEREBY ORDERED** that the Magistrate Judge's Report and Recommendation (#22) is **APPROVED** and **ADOPTED**.

IT IS FURTHER ORDERED that Defendant's Motion Dismiss, alternatively for Summary Judgment (#10) is **DENIED**, except as set forth below.

The Magistrate Judge properly did not consider the affidavit attached to Defendant's Reply (#18) brief. The Plaintiff did not have an opportunity to dispute the affidavit and it should have been filed with the Motion (#10).

The affidavit attached to the Motion (#10) was not based on personal

By /s/
Deputy Clerk